

10/719,553. The rejection was not set forth in the previous Office Action for the subject application that was mailed March 2, 2005. The rejection was neither necessitated by Applicants' amendment of the claims nor based on information submitted in an information disclosure statement filed during the period set forth in 37 C.F.R. §1.97(c). The Final Rejection is therefore improper and should be withdrawn.

Applicants note that the previous non-final Office Action mailed March 2, 2005 set forth a provisional obviousness-type double patenting rejection over claims 13-27 of co-pending application serial no. 10/719,553. As duly noted in Applicants' response filed July 5, 2005, claims 13-27 of serial no. 10/719,553 were canceled in a Preliminary Amendment filed December 21, 2004, well before the March 2, 2005 date of non-final Office Action. The respective obviousness-type double patenting rejections set forth in the Office Action mailed March 2, 2005 and the Final Office Action mailed September 16, 2005 are not the same rejection. Therefore, in accordance with the rules of practice, the latter Office Action should not be made final. MPEP 706.07(a).

[3] **Conclusion**

For the reasons set forth above, the pending Final Office Action in the subject application is improper and should be withdrawn. The Examiner is requested to withdraw the Final Office Action and issue a new non-final Office Action.

[4] **Examiner Interview Summary**

On September 22, 2005, the undersigned attorney contacted Examiner Nolan to discuss the propriety of the pending Final Office Action. No agreement was reached. The Examiner suggested the filing of a Request for Reconsideration. The present paper is believed to adopt the Examiner's suggestion.

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Respectfully submitted,

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